REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2976
(CTA Case Nos. 10099 & 10176)

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

MELCO RESORTS LEISURE (PHP) CORPORATION,
Respondent.

CTA *EB* NO. 2980
(CTA Case Nos. 10099 & 10176)

Present:

RINGPIS-LIBAN, *Acting P.J.*,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

OCT 28 2025 3:30 pm

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DECISION

***CUI-DAVID, J.*:**

In these consolidated *Petitions for Review*, both Melco Resorts Leisure (PHP) Corporation ("Melco") and the

Commissioner of Internal Revenue ("CIR") assail the *Amended Decision*[1] dated February 21, 2024, and the *Resolution*[2] dated August 5, 2024, rendered by this Court's Special First Division (Court in Division) in CTA Case Nos. 10099 and 10176, entitled *Melco Resorts Leisure (PHP) Corporation v. Commissioner of Internal Revenue*. The dispositive portions of the assailed *Amended Decision* and *Resolution* are as follows:

<u>Assailed Amended Decision of February 21, 2024</u>:

> **WHEREFORE**, premises considered, petitioner's *Motion for Reconsideration (of the Decision dated September 21, 2023)* filed on October 12, 2023, is **PARTIALLY GRANTED**.
>
> Accordingly, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE (TCC)** to petitioner the reduced amounts of ₱84,035.00 and ₱411,279.00, for the third and fourth quarters of TY 2017, respectively, or in the aggregate amount of ₱495,314.00 representing tax paid on importation of goods other than capital goods.
>
> **SO ORDERED**.

<u>Assailed Resolution of August 5, 2024</u>:

> **WHEREFORE**, premises considered, petitioner's *Motion for Partial Reconsideration [of Amended Decision dated February 21, 2024]* and respondent's *Motion for Partial Reconsideration (Re: Decision dated 5 February 2024)* are **DENIED** for lack of merit.
>
> Accordingly, the Amended Decision of the Court in the above-captioned case dated February 21, 2024, is hereby **AFFIRMED**.
>
> **SO ORDERED**.

Melco's *Petition for Review*,[3] filed on September 6, 2024, and docketed as CTA *EB* No. 2976, prays that the assailed *Amended Decision* and *Resolution* be set aside, and that a new decision be rendered ordering the CIR to refund or issue a tax credit certificate (**TCC**) in the aggregate amount of ₱82,689,950.91, allegedly representing erroneously paid value-added tax (**VAT**) on Melco's purchases of goods (other than capital goods) and services, importations of goods (other than

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[1] Division Docket – Vol. II, pp. 903–920.
[2] Division Docket – Vol. II, pp. 966–977.
[3] *En Banc (EB)* Docket (CTA *EB* No. 2976), pp. 39–75.

capital goods), and purchases of services rendered by non-residents, which are passed on by Melco's suppliers and are related to revenues from gaming operations for the third (**3rd**) and fourth (**4th**) quarters of taxable year (**TY**) 2017.

Conversely, in his *Petition for Review*[4] filed on September 9, 2024, the CIR likewise seeks the reversal and setting aside of the assailed *Amended Decision* and *Resolution,* and prays for a new judgment denying Melco's claim for refund for lack of merit.

THE PARTIES

Melco [formerly, MCE Leisure (Philippines) Corporation] is a corporation organized and existing under the laws of the Philippines, with principal address at Asean corner Roxas Boulevard, Barangay Tambo, Parañaque City.[5] It is a co-licensee and a holder of a Provisional License and Regular Casino Gaming Licenses, all issued by the Philippine Amusement and Gaming Corporation ("**PAGCOR**") in accordance with the PAGCOR Charter [Presidential Decree (**PD**) No. 1869, as amended by Republic Act (**RA**) No. 9487].[6]

The CIR is the duly appointed Commissioner of the Bureau of Internal Revenue ("**BIR**"). He holds office at the BIR National Office Building located at BIR Road, Diliman, Quezon City.[7]

THE FACTS AND THE PROCEEDINGS

The relevant facts and antecedent proceedings, as narrated by the Court in Division in its *Decision* dated September 21, 2023,[8] are as follows:

> On March 29, 2019, [Melco] filed an administrative claim for refund or tax credit of erroneously and illegally paid VAT on purchases attributable or allocable to its revenues from gaming operations, for the 3rd quarter of taxable year 2017, amounting to ₱43,469,919.17. The CIR, however, denied the same in his letter dated April 12, 2019, which was received by [Melco] on July 30, 2019.

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[4] *EB* Docket (CTA *EB* No. 2980), pp. 7–17.

[5] Docket (CTA Case No. 10099) — Vol. I, p. 385, *Joint Stipulations of Facts and Issues* (JSFI), Stipulation of Facts, par. 1; Refer also to Exhibit "P-1", Docket (CTA Case No. 10099) — Vol. I, pp. 187–192.

[6] Docket (CTA Case No. 10099) — Vol. I, p. 193, 194, and 197, Exhibits "P-2", "P-3", "P-4", respectively.

[7] *Id.* at 385, JSFI, Stipulation of Facts, par. 2.

[8] Division Docket – Vol. II, pp. 835–860.

On June 28, 2019, [Melco] filed another administrative claim for refund or tax credit of erroneously and illegally paid VAT on purchases attributable or allocable to its revenues from gaming operations, for the 4th quarter of taxable year 2017, in the amount of ₱39,220,031.74. The CIR likewise denied the same in his letter dated September 17, 2019, which was received by [Melco] on September 20, 2019.

... ...

CTA Case No. 10099:

Alleging [CIR's] inaction on its claim for refund amounting to ₱43,469,919.17, [Melco] filed its *Petition of Review* on July 1, 2019.

On August 15, 2019, [CIR] filed a *Motion for Extension of Time to File Answer*, which the Court granted in the Order dated August 27, 2019, thereby giving [CIR] until September 16, 2019 to file his *Answer*. [CIR] filed the same on September 16, 2019.

The Pre-Trial Conference was set on November 21, 2019. Pre-Trial Conference was set on November 21, 2019. [CIR] transmitted the *BIR Records* for this case on September 25, 2019.

On November 13, 2019, [Melco] filed its *Omnibus Motion: I. To Consolidate with CTA Case No. 10176; and II. To Postpone Pre-Trial Conference set on November 21, 2019 at 9:00 A.M.* In the Order dated November 20, 2019, the Court ordered [CIR] to file his comment or opposition to the said *Motion to Consolidate*, and granted the said *Motion to Postpone Pre-Trial Conference*, thereby cancelling the scheduled Pre-Trial Conference, until its further orders.

[CIR], however, failed to file his comment.

In the meantime, on November 15, 2019, [CIR] filed his *Pre-Trial Brief*.

In the Resolution dated February 3, 2020, the Court granted [Melco's] *Motion to Consolidate with CTA Case No. 10176*.

CTA Case No. 10176:

Appealing the denial of [Melco's] refund claim amounting to ₱39,220,031.74, the *Petition for Review* for this case was filed by [Melco] on October 1, 2019.

On October 30, 2019, [CIR] filed his *Motion for Extension of Time to File Answer*, which the Court granted in the Order dated November 8, 2019, thereby giving [CIR] until December 2, 2019 to file his *Answer*.

[Melco] filed its *Motion for Consolidation [with CTA Case No. 10099]* on November 13, 2019. [CIR], however, failed to file his comment thereto.

[CIR] filed his *Answer* on December 2, 2019, interposing certain special and affirmative defenses, which are substantially the same as those proffered by [CIR] in CTA Case No. 10099.

On December 11, 2019, [CIR] filed a *Motion to Defer Transmittal of BIR Records*, which the Court granted in the Resolution dated January 20, 2020.

In the Resolution dated February 3, 2020, the Court consolidated CTA Case No. 10176 with CTA Case No. 10099.

After the consolidation of the cases:

In the Resolution dated February 17, 2020, the Court set the Pre-Trial Conference on April 2, 2020, and directed the parties to submit their respective consolidated *Pre-Trial Briefs*, and judicial affidavits of their intended witness/es and exhibits.

[CIR] filed his *Pre-Trial Brief* on August 20, 2020. On the other hand, the *Consolidated Pre-Trial Brief for Petitioner* was submitted on November 6, 2020.

The *BIR Records* for CTA Case No. 10176 was transmitted on November 10, 2020; and *Respondent's Pre-Trial Brief* for the same case was filed on November 11, 2020.

After three (3) resettings, the Pre-Trial Conference was eventually held on March 4, 2021.

On March 19, 2021, the parties filed their *Joint Stipulation of Facts and Issues*, which the Court approved in its Resolution dated May 26, 2021, thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated September 27, 2021 was then issued.

Trial ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

[Melco] offered the testimonies of the following individuals, namely: (1) Mr. Julius-Ver De Guzman, [Melco's] Financial Controller; (2) Mr. Rafael B. Taladtad, Jr., [Melco's]

> Director for Revenue Audit; and (2) Ms. Madonna Mia S. Dayego, the Court-commissioned independent certified public accountant (ICPA).
>
> The *Report* dated August 12, 2021 of the said ICPA was submitted on October 25, 2021.
>
> On February 3, 2022, [Melco] filed its *Formal Offer of Evidence*, to which [CIR] filed his *Comment (On Petitioner's Formal Offer of Evidence)* on February 16, 2022. In the Resolution dated April 19, 2022, the Court admitted all of petitioner's offered exhibits.
>
> For his part, [CIR] offered the testimonies of the following Revenue Officers: (1) Mr. Joel M. Aguila, and (2) Ms. Ma. Theresa L. Espino.
>
> On July 1, 2022, [CIR] filed his *Formal Offer of Evidence*, to which [Melco] filed its *Comment [On Respondent's Formal Offer of Evidence dated June 30, 2022]* on July 11, 2022. In the Resolution dated August 5, 2022, the Court admitted all of [CIR's] offered exhibits.
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> In the *Manifestation* dated September 9, 2022, [CIR] stated that he is adopting the arguments he raised in his *Answers* filed before the Court on September 16, 2019 and on December 2, 2019 as his Memorandum. On the other hand, the *Memorandum for Petitioner* was filed on September 12, 2022.
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> This case was submitted for decision on September 23, 2022.

On September 21, 2023, the Court in Division rendered a *Decision*[9] denying the consolidated *Petitions for Review* for lack of merit. Citing *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*,[10] the Court in Division held that PAGCOR's tax exemption does not extend to a PAGCOR licensee authorized to operate its own casino. It emphasized that Melco is a licensee of PAGCOR; hence, PAGCOR's exemption does not inure to its benefits.

Further, the Court in Division held that Melco has no legal personality to file the subject refund claims. It explained that the rules on legal standing to file refund claims (under Section 229 of the NIRC of 1997, as amended) are further qualified, specifically those involving the refund of passed-on VAT or input

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[9] *Id.*
[10] G.R. No. 211327, November 11, 2020 [Per J. Leonen, Third Division].

VAT. Citing *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue,*[11] the Court in Division clarified that even if the input VAT is 'excessively' collected as understood under Section 229, it is the person legally liable to pay the input VAT, and not the person to whom the tax is passed on and who applies it as credit against output VAT, who can file a judicial claim for refund or tax credit outside the VAT system.

Aggrieved, Melco filed a *Motion for Reconsideration [of Decision dated September 21, 2023]*[12] on October 12, 2023, to which the CIR filed his *Comment (Re: Petitioner's Motion for Reconsideration)*[13] *via* electronic mail on October 31, 2023.

On February 21, 2024, the Court in Division rendered the assailed *Amended Decision,*[14] partially granting Melco's *Motion for Reconsideration* and ordering the CIR to refund or issue a TCC in favor of Melco in the reduced amount of ₱495,314.00, representing the VAT paid on the importation of goods other than capital goods for the 3rd and 4th quarters of TY 2017.

Still dissatisfied, Melco filed a *Motion for Partial Reconsideration [of Amended Decision dated February 21, 2024]*[15] on March 15, 2024, while the CIR filed his own *Motion for Partial Reconsideration (Re: Decision dated 5 February 2024)*[16] on March 19, 2024.

On August 5, 2024, the Court in Division issued the assailed *Resolution*[17] denying both motions for partial reconsideration for lack of merit. Hence, the two (2) *Petitions for Review* separately filed by Melco and the CIR, docketed as CTA *EB* No. 2976 and CTA *EB* No. 2980, respectively.

On September 10, 2024, the Court *En Banc* ordered[18] the consolidation of the two (2) *Petitions for Review* pursuant to Section 1, Rule 31 of the Revised Rules of Court.

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[11] G.R. No. 222428, February 19, 2018 [Per J. Peralta, Second Division].
[12] Division Docket – Vol. II, pp. 861–887.
[13] *Id.* at 894–899.
[14] *Id.* at 903–920.
[15] *Id.* at 921–938.
[16] *Id.* at 939–947.
[17] *Id.* at 966–977.
[18] *EB* Docket (CTA *EB* No. 2976), p. 145.

Thereafter, on December 12, 2024, the Court *En Banc* issued a *Resolution*[19] directing the parties to file their respective comments on each other's *Petition for Review*, within ten (10) days from notice.

In compliance, Melco filed its *Comment/Opposition [Re: Petition for Review filed on September 9, 2024]*[20] on January 6, 2025. The CIR, however, failed to file any comment or opposition to Melco's *Petition for Review* despite the directive. Consequently, on January 30, 2025, the instant consolidated *Petitions for Review* were submitted for decision.[21]

Hence, this Decision.

THE ISSUES

CTA EB No. 2976 (Melco's Petition for Review):

Melco submits the following issues for resolution by the Court *En Banc*, to wit:

A. WHETHER OR NOT THE HONORABLE SPECIAL FIRST DIVISION ERRED IN RULING THAT PETITIONER IS NOT ENTITLED TO THE REFUND OF INPUT VAT ERRONEOUSLY OR ILLEGALLY PASSED ON BY ITS SUPPLIER NOTWITHSTANDING THE RULING THAT THE TAX EXEMPTION GRANTED TO PAGCOR EXTENDS TO PETITIONER.

B. WHETHER OR NOT THE HONORABLE SPECIAL FIRST DIVISION ERRED IN APPLYING SECTION 112 OF THE NIRC, AS AMENDED AND DISREGARDING SECTION 204 AND SECTION 229 OF THE NIRC IN HOLDING THAT PETITIONER IS NOT ENTITLED TO THE CLAIM FOR REFUND.

C. WHETHER OR NOT THE HONORABLE SPECIAL FIRST DIVISION ERRED IN DISREGARDING *PHILIPPINE AIRLINES, INC. V. COMMISSIONER OF INTERNAL REVENUE ("PAL CASE")*, AND IN NOT HOLDING THAT A TAXPAYER CONFERRED WITH INDIRECT TAX EXEMPTION BY A SPECIAL LAW CAN CLAIM FOR A REFUND OF THE TAX ERRONEOUSLY AND ILLEGALLY PASSED ON, NOTWITHSTANDING THAT THE

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[19] *Id.* at 146.
[20] *Id.* at. 147–159.
[21] Minute Resolution dated January 30, 2025.

CLAIMANT-TAXPAYER IS NOT THE STATUTORY TAXPAYER.

D. WHETHER OR NOT THE HONORABLE SPECIAL FIRST DIVISION ERRED IN RULING THAT PETITIONER IS NOT ENTITLED TO THE FULL REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE ("TCC") OF ERRONEOUSLY AND ILLEGALLY PAID VAT ON PURCHASES OF CAPITAL GOODS, DOMESTIC PURCHASE OF GOODS (OTHER THAN CAPITAL GOODS) AND SERVICES, IMPORTATION OF GOODS (OTHER THAN CAPITAL GOODS) AND PURCHASES OF SERVICES RENDERED BY NON-RESIDENTS, WHICH ARE ATTRIBUTABLE OR ALLOCABLE TO REVENUES FROM GAMING OPERATIONS OF THE 3RD AND 4TH QUARTERS OF 2017 AMOUNTING TO ₱43,469,919.17 AND ₱39,220,031.74, RESPECTIVELY, OR IN THE AGGREGATE AMOUNT OF ₱82,689,950.91.

CTA EB No. 2980 (CIR's Petition for Review):

Meanwhile, the CIR anchors his petition on the sole ground that:

> THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND/TAX CREDIT IN THE TOTAL AMOUNT OF FOUR HUNDRED NINETY-FIVE THOUSAND THREE HUNDRED FOURTEEN PESOS (₱495,314.00), REPRESENTING UNUTILIZED INPUT VALUE-ADDED TAX ON ITS IMPORTATION OF GOODS OTHER THAN CAPITAL GOODS HAS LEGAL AND FACTUAL BASIS FOR THE THIRD AND FOURTH QUARTERS OF TAXABLE YEAR 2017.

Melco's arguments:

Melco maintains that it is exempt from input VAT on purchases attributable to its gaming operations pursuant to Section 13(2)(b), in relation to Section 13(2)(a) of PD No. 1869. Hence, it claims entitlement to a refund of input VAT erroneously passed on by its suppliers.

Melco contends that Section 13(2) of PD No. 1869 grants PAGCOR tax exemptions and extends the same privilege to corporations, associations, agencies, or individuals with whom PAGCOR has a contractual relationship. As a PAGCOR licensee, it should likewise be exempt from both direct and indirect taxes. As such, the act of passing on the input VAT to it is clearly erroneous.

Melco further contends that the VAT imposed and collected on its gaming-related operations, being contrary to Section 13(2)(b), in relation to Section 13(2)(a), of PD No. 1869, as amended, is erroneously or illegally paid. Hence, it should be allowed to claim a refund under Sections 204 and 229 of the NIRC of 1997, as amended, for the said erroneously paid input VAT.

Melco notes that in the assailed *Amended Decision*, the Court in Division stated that Melco is engaged in the business of developing and operating tourist facilities, including hotel-casino entertainment complexes with hotels, retail amusement areas, and themed development components, without being engaged in retail trade and casino gaming activities. The Court in Division held that these activities are not considered zero-rated or effectively zero-rated sales under the relevant provisions of NIRC of 1997, as amended, and thus cannot be the source of the claimed input VAT.

However, Melco counters that it is seeking a refund or the issuance of a TCC for the illegally or erroneously paid VAT on purchases attributable or allocable to revenues derived from gaming operations, under Sections 204 and 229 of the NIRC of 1997, as amended. It explains that Section 112 of the same Code does not apply because its claim is not based on excess or unutilized input VAT from zero-rated sales, but on the erroneous or illegal payment of input VAT passed on by its suppliers, which should not have been shifted to it pursuant to the exemption under PD No. 1869.

Melco also counters that it is conferred with indirect tax exemption under a special law, and is therefore allowed to claim a refund even if it is not the statutory taxpayer. Citing *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[22] *(**PAL case**)*, it emphasizes that the Supreme Court elucidated that the rule granting the statutory taxpayer the exclusive right to file a claim for refund does not apply where the law clearly grants the party to which the economic burden of the tax is shifted an exemption from both direct and indirect taxes. In such cases, the latter must be allowed to seek a refund even if it is not considered a statutory taxpayer.

[22] G.R. No. 198759, July 1, 2013 [J. Perlas-Bernabe, Second Division]

Like the *PAL* case, Melco argues that when its suppliers pass on input VAT to it, it is entitled to claim a refund by virtue of the indirect tax exemption granted under Section 13(2)(b), in relation to Section 13(2)(a), of PD No. 1869, as amended. Further, it invokes the principle of *solutio indebiti,* which applies equally to the Government, thereby obligating it to return taxes erroneously paid by the taxpayer.

Melco further argues that it timely filed its claim for a refund of erroneously and illegally paid VAT on purchases attributable or allocable to its revenues from gaming operations for the 3rd and 4th quarters of TY 2017. It cites the case of *Unisys Public Sector Services Corporation v. Commissioner of Internal Revenue*,[23] where the Court *En Banc* allegedly ruled that it is the taxpayer's monthly payment that is material in determining the timeliness of a refund claim.

Melco maintains that it was erroneous for the Court in Division to disallow the amount of ₱173,952.00, which pertains to common purchases allocated to exempt and VATable sales. According to Melco, allocating common purchases to gaming and non-gaming revenues does not imply that these expenses are no longer directly attributable to gaming revenues. The allocation refers to the separation of amounts, as evidenced by a single invoice or receipt, to classify which amount is directly attributable to gaming and non-gaming revenues. It also maintains that common purchases attributable or allocable to the exempt sales are a valid source of input VAT on importation of goods that is a proper subject of claim for refund. Hence, the amount of ₱734,921.13 should be allowed as computed by the ICPA in its Report, considering that the same is determined to be attributable or allocable to exempt sales.

Finally, Melco contends that the disallowed amount of ₱89,906.00 is not barred by prescription.

CIR's arguments:

In support of his *Petition for Review*, CIR avers that in the present consolidated cases, Melco seeks to recover passed-on VAT allegedly erroneously and illegally paid on purchases

[23] CTA *EB* No. 1232, November 29, 2016.

attributable to its revenues from gaming operations for the 3rd and 4th quarters of TY 2017.

In the assailed *Amended Decision*, the Court in Division allegedly agreed with Melco that the tax exemption of PAGCOR also extends to its licensees, a conclusion with which the CIR disagrees.

According to CIR, the statutory exemption is for PAGCOR, not its franchisees. CIR explains that the tax exemption granted under Section 13(2)(b) of PD No. 1869 shall inure only to those entities that provide necessary services to PAGCOR in connection with PAGCOR's casino operations. For the CIR, this tax exemption does not inure to the benefit of entities who are mere licensees of PAGCOR's franchise. Simply put, the exemption is granted only to PAGCOR when it operates the casino by itself, and extends to entities that provide necessary services to PAGCOR in relation to its gaming operations.

The CIR also notes that there is nothing in PD No. 1869 which specifically states that a licensee of PAGCOR is exempt from tax. Although there is a mention of entities in Section 13(2)(b) of PD No. 1869, the said entities pertain to those who perform essential and technical services for PAGCOR in relation to the latter's operations of the casinos. It does not cover those entities not actually operated by PAGCOR itself, such as Melco.

Thus, the CIR asserts that Melco, a PAGCOR licensee, is not entitled to the refund of allegedly erroneously or illegally paid VAT, as it is not exempt from payment of VAT.

The CIR adds that even assuming Melco is VAT-exempt, its recourse is against its suppliers, not to claim a refund with the BIR, citing the cases of *Hedcor, Inc. v. Commissioner of Internal Revenue*[24] *(Hedcor), Maibarara Geothermal Inc. v. Commissioner of Internal Revenue*[25] *(Maibarara),* and *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[26] *(Coral Bay).*

In its *Comment/Opposition [Re: Petition for Review filed on September 9, 2024],* Melco submits that CIR's petition should be denied for lack of merit since the arguments set forth therein are a mere reiteration of arguments already resolved and

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[24] CTA Case No. 8875, July 11, 2017.
[25] CTA Case Nos. 8871, 8937, 8999, & 9042, August 2, 2017.
[26] G.R. No. 190506, June 13, 2016 [Per J. Bersamin, First Division].

extensively discussed in the assailed *Amended Decision* and *Resolution* of the Court in Division.

Nevertheless, Melco maintains that the CIR is under the wrong impression that the tax exemption under Section 13(2) of PD No. 1869 "does not inure to the benefit of entities who are mere licensees of PAGCOR's franchise."

According to Melco, a simple reading of Section 13(2)(b) of PD No. 1869 shows that the tax exemption granted to PAGCOR shall inure to the benefit of corporations, associations, agencies, or individuals with whom PAGCOR has any contractual relationship in connection with the operations of the casino(s). In fact, Melco notes that in *Melco Resorts Leisure (PHP) Corp. v. Commissioner of Internal Revenue*,[27] this Court's *En Banc* categorically ruled that the tax exemption granted under PD No. 1869 inures to the benefit of PAGCOR's licensees and contractees.

Also, Melco counters that the cases cited by the CIR do not apply to the present case. According to Melco, *Hedcor* and *Maibarara* cases are refund claims for input tax attributable to zero-rated sales under Section 112(A) of the NIRC of 1997, as amended, while the instant case was filed based on Section 229 of the NIRC of 1997, as amended, for the refund of erroneously paid input tax attributable or allocable to its exempt sales pursuant to PD No. 1869. Conversely, *Coral Bay* does not apply, as jurisprudence has settled that where the law clearly grants the party, to which the economic burden of the tax is shifted, an exemption from both direct and indirect taxes, the latter must be allowed to claim a tax refund even if it is not considered a statutory taxpayer under the law.

THE COURT *EN BANC'S* RULING

Before delving into the merits of the consolidated cases, the Court *En Banc* must first determine whether the present *Petitions for Review* were timely filed.

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[27] CTA *EB* No. 2608 (CTA Case No. 9811), July 11, 2023.

Both Petitions for Review were seasonably filed; hence, the Court En Banc has jurisdiction over the same.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) states:

> SEC. 3. *Who may appeal; period to file petition.* — ...
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> ... ...
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

Records show that Melco received the assailed *Resolution* on August 8, 2024. Thus, it had fifteen (15) days from August 8, 2024, or until August 23, 2024, to file its *Petition for Review* before the Court.

On August 22, 2024, Melco filed a *Motion for Extension of Time to File Petition for Review,* praying for an additional 15 days from August 23, 2024, or until September 7, 2024, to file its *Petition for Review.* The Court *En Banc* granted the said *Motion* in a Minute Resolution dated August 30, 2024. On September 6, 2024, within the extended period, Melco filed its *Petition for Review.*

On the other hand, the CIR received the assailed *Resolution* on August 15, 2024. Counting 15 days therefrom, he had until August 30, 2024, to file his *Petition for Review.* Like Melco, the CIR filed a *Motion for Extension of Time to File Petition for Review,* which the Court *En Banc* granted in the same Minute Resolution dated August 30, 2024. Thus, the CIR had until September 8, 2024 to file his *Petition for Review.* Since September 8, 2024 fell on a Sunday, the CIR timely filed his *Petition for Review* on September 9, 2025.

Considering the foregoing, both Melco and the CIR seasonably filed their respective *Petitions for Review*. Accordingly, the Court *En Banc* has jurisdiction to take cognizance of the present *Petitions*.

The Court *En Banc* now proceeds to the merits.

<u>On CTA EB No. 2976 (Melco's Petition for Review)</u>:

Melco's *Petition for Review* deserves scant consideration. After a judicious review of its arguments and the records of the case, the Court *En Banc* finds no reason to modify, much less reverse, the assailed *Amended Decision* and *Resolution* of the Court in Division.

A revisit of Melco's arguments shows that they were amply discussed and passed upon by the Court in Division in its *Amended Decision* dated February 21, 2024, and *Resolution* dated August 5, 2024. Be that as it may, and if only to put Melco's contentions to rest, the Court *En Banc* shall nonetheless address them anew to reinforce the ruling of the Court in Division.

The exemption of PAGCOR from all kinds of taxes, as the franchise holder under PD No. 1869, inures to the benefit of its licensees and contractees.

Melco seeks the refund or issuance of TCC in the amount of ₱43,469,919.17 and ₱39,220,031.74, representing allegedly erroneous or illegal VAT payments on its purchases of capital goods, domestic purchases of goods (other than capital goods) and services, importation of goods (other than capital goods) and purchases of services rendered by non-residents, which are allocable to revenues from its gaming operations for the 3rd and 4th quarters of TY 2017.

Melco anchors its claim for refund on PD No. 1869, otherwise known as the PAGCOR Charter, which allegedly exempts PAGCOR from the payment of both direct and indirect taxes, provided that a five percent (5%) franchise tax is paid pursuant to the "in lieu of all taxes" provision therein. According to Melco, the privileges granted to PAGCOR under its charter,

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inure to the benefit of its licensees and contractees, pursuant to Section 13(2)(b), in relation to Section 13(2)(a), of PD No. 1869, as amended. As a PAGCOR licensee, it claims exemption from both direct and indirect taxes. Hence, it asserts entitlement to a refund of VAT erroneously passed on by its suppliers on purchases attributable or allocable to its gaming operations.

Indeed, jurisprudence has settled that PAGCOR's licensees and contractees are exempt from all kinds of taxes, direct and indirect, upon proof of payment of the five percent (5%) franchise tax. This was categorically pronounced in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*[28] (*Bloomberry*), and later echoed in *Saint Wealth Ltd. v. Bureau of Internal Revenue*[29] (*Saint Wealth*) where the Supreme Court, in no uncertain terms, declared:

> Under Section 13(2)(a) of the PAGCOR Charter, PAGCOR is exempt from the payment of any and all taxes on its income derived from gaming operations, except for a five percent (5%) franchise tax on its gross revenues or earning:
>
> ... ...
>
> **Such exemption extends to PAGCOR's licensees pursuant to Section 13(2)(b) of the PAGCOR Charter**, which provides:
>
> ... ...
>
> Considering the above-cited provisions, this Court clarified in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue (Bloomberry)*, that PAGCOR's tax privilege of paying only a five percent (5%) franchise tax for income generated from its gaming operations, in lieu of all other taxes, **inures to the benefit of PAGCOR's licensees**:
>
> ... ...
>
> Clearly, both law and jurisprudence mandate that PAGCOR's licensees are only liable to pay a five percent (5%) franchise tax for income derived from its gaming operations. However, a plain reading of the PAGCOR Charter and the ruling in Bloomberry shows that the liability of paying the five percent (5%) franchise tax only applies to PAGCOR's licensees which are connected to the operations of casinos and other related amusement places. (*Emphasis supplied*)

[28] G.R. No. 212530, August 10, 2016 [Per J. Perez, Third Division].
[29] G.R. Nos. 252965 & 254102, December 7, 2021 [Per J. Gaerlan, *En Banc*].

Here, it was established that Melco is a PAGCOR licensee, as evidenced by the Gaming License dated April 29, 2015. It was likewise established that Melco paid the license fee to PAGCOR, inclusive of the five percent (5%) franchise tax, on gaming revenue derived from casino operations. Hence, PAGCOR's tax exemption privileges inure to the benefit of Melco pursuant to Section 13(2)(b), in relation to Section 13(2)(a), of PD No. 1869, as amended.

This leads the Court to the corollary issue of whether Melco's exemption from the payment of VAT entitles it to a refund of input VAT paid on its purchases of: (1) capital goods; (2) domestic purchases of goods (other than capital goods) and services; (3) importation of goods (other than capital goods); and (4) purchases of services rendered by non-residents, allegedly representing erroneously or illegally collected input VAT attributable or allocable to its revenues from gaming operations.

Only VAT-registered persons engaged in zero-rated or effectively zero-rated sales may claim a refund or tax credit of input VAT. Melco, however, is tax-exempt under PD No. 1869; thus, its sales are VAT-exempt pursuant to Section 109(1)(K) of the NIRC of 1997, as amended.

In the assailed *Amended Decision*, the Court in Division held:

> Essential to any claim for refund of taxes is the legal basis of entitlement to such claim. It is well-settled that the entitlement to a refund or credit of excess input tax is solely based on the distinctive nature of the VAT system. There is indeed a distinction between claims for refund of erroneously paid or illegally collected tax under Section 229 of the 1997 NIRC, as amended, and the refund of unutilized input VAT based on zero-rated sales under Section 112 of the same Code. Relevant to the nature of the instant claim for refund is Section 112 of the 1997 NIRC, as amended, quoted as follows:
>
> 'Section 112. Refunds or Tax Credits of Input Tax. –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may,

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within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(8)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(8)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

(B) *Cancellation of VAT Registration.* - A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unusual input tax which may be used in payment of his other internal revenue taxes.

(C) *Period within which Refund of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund for creditable input taxes within one hundred twenty (120) days from date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof: xxx xxx xxx

> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or expiration of the one hundred twenty-day period, appeal the decision with the Court of Tax Appeals.'

Notwithstanding [Melco's] reliance on Section 229 of the NIRC, as amended, as one of the bases of its claim for refund, the records cannot hide the fact that the same refers to its alleged excess/unutilized input VAT. The foregoing provisions of Section 112 of the 1997 NIRC, as amended, clearly show that the input tax to be refunded must be attributable to VAT zero-rated or effectively VAT zero-rated sales.

In the recently decided CTA *En Banc* case involving the same parties, the Court *En Banc*, in affirming the decision of the First Division's Decision in CTA Case No. 9811, ruled thus:

> Therefore, as aptly found by the Court in Division, petitioner's refund or tax credit claim under Section 112 of the NIRC of 1997, as amended, fails. **There is no showing that petitioner is engaged in zero-rated sales or effectively zero-rated sales to comply with the fourth requisite and entitle it to a refund or tax credit of its input VAT attributable to its purported zero-rated sales.** (*Emphasis in the original*)

[Melco] is engaged in the business of developing and operating tourist facilities, including hotel casino entertainment complexes with hotel, retail and amusement areas and themed development components, without being engaged in retail trade, and in casino gaming activities. These activities are not considered zero-rated or effectively zero-rated sales under the relevant provisions of the 1997 NIRC, as amended, thus cannot be the source of the claimed input VAT.

Even the indirect tax exemption invoked by petitioner arising from its status as a PAGCOR licensee, cancels out the possibility of claiming the alleged excess input VAT because the input VAT attributable to an exempt transaction is neither creditable or refundable. xxx (*Boldfacing supplied*)

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In the very recent case of *Melco Resorts Leisure (PHP) Corporation v. Commissioner of Internal Revenue*[30] *(Melco* case*)*, involving the same parties in this case, the Supreme Court affirmed this Court's finding that Melco, being VAT-exempt, cannot claim a refund of input VAT that may have been passed on to it by its suppliers. The relevant portion of the decision reads:

> The CTA did not err in ruling that Melco was not entitled to the refund or the issuance of tax credit certificate in the total amount of PHP81,119,005.84. Applying the law and jurisprudence, Melco's payment of the said amount was not erroneous nor illegal; hence, not refundable. **Instead, such payment represented and formed part of the purchase price it paid to its suppliers.**
>
> ... ...
>
> In its pleadings before the CTA, Melco sought relief through both Sections 112 and 229 of the Tax Code. Section 112 (A) pertains to the refund of unutilized input VAT attributable to zero-rated sales, while Section 229 refers to the recovery of erroneously or illegally collected tax payments.
>
> ... ...
>
> In denying Melco's claim for refund of input VAT under Section 112, the CTA First Division ruled in its Resolution dated April 6, 2022, as follows:
>
>> There is no dispute that [Melco's] claim for refund involves alleged excess input VAT attributable to its purchases of capital goods, domestic purchases of goods (other than capital goods) and purchases of services rendered by non-residents which were passed on by its suppliers. **In the Petition for Review filed on April 12, 2018, [Melco] specifically prayed for the refund or tax credit of [PHP]81,119,005.84 representing "excess and unutilized input VAT on its purchases of capital goods, domestic purchases of goods (other than capital goods) and services, importations of goods (other than capital goods) and purchases of services rendered by non-residents which are attributable to zero-rated sales for the 1st quarter of taxable year 2016."**
>>
>> **The report of the Independent Certified Public Accountant (ICPA) presented as Exhibit "P-248" was the result of the study made on the documents such as invoices and receipts to ascertain the amount of unutilized input VAT that**

[30] G.R. No. 271261, April 2, 2025 [J. Hernando, First Division].

> **may be the subject of a refund or tax credit.** By the very nature of the claim for refund of alleged excess input VAT filed by [Melco] as borne out by the records of this case, the Court approached and resolved the same in light of the relevant provisions of the 1997 NIRC, as amended, focusing particularly on zero-rated sales to determine whether [Melco] complied with the requisites on refunds of alleged excess input VAT . . .
>
> . . . .
>
> **[Melco] is engaged in the business of developing and operating tourist facilities, including hotel casino entertainment complexes with hotel, retail and amusement areas and themed development components, without being engaged in retail trade, and to engage in casino gaming activities. These activities are not considered zero-rated or effectively zero-rated sales under the relevant provisions of the 1997 NIRC, as amended, thus cannot be the source of the claimed input VAT.**
>
> The alternative theory of indirect tax exemption proffered by [Melco] arising from its status as a PAGCOR licensee, cancels out the possibility of claiming the alleged excess input VAT because input VAT attributable to an exempt transaction is neither creditable nor refundable . . .
>
> **Being exempted from VAT, the input taxes that may have been passed on to it by its suppliers cannot be the subject of a claim for refund.**

We emphasize that Melco's claim for refund under Section 112 of the Tax Code failed before the CTA, in division and *en banc. We* agree with their factual findings and rulings, and adopt the same. Thus, while Melco is a VAT-exempt entity, its transactions with its suppliers are not considered zero-rated or effectively zero-rated sales under the Tax Code.

No further discussion of Melco's claim for refund under Section 112 of the Tax Code follows.

On the other hand, the CTA *En Banc* concluded that the petition before it was anchored solely on Section 229 of the Tax Code. The same is true in the present Petition.

We emphasize that Melco presently seeks its erroneous payment of passed-on input VAT on purchases attributable to gaming revenues for the 1st quarter of taxable year 2016. It follows, therefore, that the applicable provision is Section 229 of the NIRC, as amended, considering that the issue involves the recovery of taxes erroneously paid.

The power of the CIR to refund or credit taxes is recognized under Section 204(C) of the Tax Code. The provision of law states:

> SEC. 204. ***Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.*** — The Commissioner may —
>
> . . . .
>
> (C) **Credit or refund taxes erroneously or illegally received** or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his[/her] discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

On the other hand, Section 229 of the Tax Code provides:

> SEC. 229. ***Recovery of Tax Erroneously or Illegally Collected.*** — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed unless there is a full or partial denial of the claim for refund or credit by the Commissioner or there is a failure on the part of the Commissioner to act on the claim within the one hundred eighty (180)-day period under Section 204 of this Code; Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.
>
> In case of full or partial denial of the claim for tax refund, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision

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> denying the claim or after the expiration of the one hundred eighty (180)-day period, appeal the decision with the Court of Tax Appeals.
>
> *We* have defined an "erroneous or illegal tax" as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which in some other similar respect is illegal. In jurisprudence, *We* also held that an erroneous payment of tax is when the taxpayer pays under a mistake of fact, as when the taxpayer is not aware of an existing exemption in his or her favor at the time the payment was made. Thus, when payment is not voluntary, it can then be recovered or refunded.
>
> By way of example, *We* ruled in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation* that Acesite paid by mistake VAT on its rental income and sale of food and beverages to PAGCOR, a tax-exempt entity. Acesite, a contractee of PAGCOR and a non-VAT purchaser, was able to prove that it was not aware that the transactions it had with PAGCOR were zero-rated at the time it made its payments. Thus, it was entitled to a tax refund from the BIR.
>
> **Applying the applicable law and jurisprudence, *We* affirm the ruling of the CTA that Melco was not entitled to the refund or the issuance of tax credit certificate in the total amount of PHP81,119,005.84. Melco's payment of the said amount was not erroneous nor illegal; hence, not refundable. Instead, such payment represented and formed part of the purchase price it paid to its suppliers.** (*Emphasis supplied; citations omitted*)

As the Supreme Court aptly ruled in the *Melco* case, whether under Section 112 or Section 229 of the NIRC of 1997, as amended, **Melco is not entitled to a refund or issuance of TCC of the VAT passed on to it by its <u>suppliers</u>**.

The Supreme Court has spoken. By tradition and in our system of judicial administration, it has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[31] Courts are bound by prior decisions. Once a case has been decided one way, courts, such as the Court of Tax Appeals, have no choice but to resolve

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[31] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003 [Per J. Davide, Jr., First Division].

subsequent cases involving the same issue in the same manner.[32]

Thus, following the ruling of the Supreme Court, and considering that the issues are on all fours with the instant case, the Court *En Banc* holds that Melco is not entitled to a refund or tax credit of the VAT passed on by its suppliers.

Input VAT paid by Melco on its importations and on services rendered by non-residents is refundable.

Melco is mandated under Sections 107(A) and 108(A)(5) of the NIRC of 1997, as amended, to pay VAT on importations and on services rendered by non-residents.

Section 4.107-1 of Revenue Regulations (**RR**) No. 16-2005,[33] which implements Section 107 of the NIRC of 1997, as amended, provides that VAT is imposed on all goods brought into the Philippines regardless of whether the importation is for business or not. However, the same provision exempts from VAT the importation of goods that are expressly exempt under Section 109(1) of the NIRC of 1997, as amended. The relevant portion of Section 4.107-1 reads:

> SECTION 4.107-1. *VAT on Importation of Goods.* —
>
> (a) In general. — **VAT is imposed on goods brought into the Philippines, whether for use in business or not**. The tax shall be based on the total value used by the BOC in determining tariff and customs duties, plus customs duties, excise tax, if any, and other charges, such as postage, commission, and similar charges, prior to the release of the goods from customs custody.
>
> In case the valuation used by the BOC in computing customs duties is based on volume or quantity of the imported goods, the landed cost shall be the basis for computing VAT. Landed cost consists of the invoice amount, customs duties, freight, insurance and other charges. If the goods imported are subject to excise tax, the excise tax shall form part of the tax base.

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[32] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. Nos. 184360 & 184361; *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 184384, February 19, 2014 [Per J. Villarama, Jr., First Division].

[33] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

> The same rule applies to technical importation of goods sold by a person located in a Special Economic Zone to a customer located in a customs territory.
>
> **No VAT shall be collected on importation of goods which are specifically exempted under Sec. 109 (1) of the Tax Code.** (*Boldfacing supplied*)

Section 109(1)(K) of the NIRC of 1997, as amended, exempts from VAT "transactions which are exempt under international agreements... or under special laws," *viz.*:

> SEC. 109. *Exempt Transactions.* — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax.
>
> (A) ...
>
> ... ...
>
> (K) **Transactions which are exempt** under international agreements to which the Philippines is a signatory or **under special laws**, except those under Presidential Decree No. 529; (*Emphasis supplied*)

Since Melco is exempt from tax under PD No. 1869, a special law, its importations are VAT-exempt pursuant to Section 109(1)(K) of the NIRC of 1997, as amended. Thus, applying Section 4.107-1 of RR No. 16-2005, Melco's importation of goods should be VAT-free.

As regards payments for services rendered by non-residents, the general rule is that Melco is required to withhold and remit VAT pursuant to Section 4.114-2(b)(2) of RR No. 16-2005, as amended by RR No. 4-2007,[34] which provides:

> SECTION 4.114-2. ***Withholding of VAT on*** *Government Money Payments and* ***Payments to Non-Residents.*** —
>
> (a) ...
>
> (b) The government or any of its political subdivisions, instrumentalities or agencies including GOCCs, as well as private corporation, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%) VAT, starting February 1, 2006, with respect to the following payments:

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[34] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 162005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

(1) ...
(2) **Other services rendered in the Philippines by non-residents**. *(Emphasis supplied)*

Since sales to Melco are subject to VAT at zero percent (0%), Melco, as a withholding agent, should not have subjected the services of non-residents to VAT. Corollarily, when Melco remitted VAT to the BIR on behalf of its non-resident suppliers, such payment was erroneous, akin to the ruling in *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation,*[35] as cited in the *Melco* case.

Thus, insofar as Melco alleges that VAT was collected on its importations and on payments for services rendered by non-residents, the Court finds that such VAT was erroneously collected and may properly be the subject of a refund under Section 229 of the NIRC of 1997, as amended.

In this regard, the Court *En Banc* concurs with the Court in Division, which ruled as follows:

> Section 107 (A) of the 1997 NIRC, as amended, imposes upon the importer the liability to pay the 12% VAT on the importation of goods. Accordingly, since the herein [Melco] (as importer and one who directly paid the VAT) is exempt from doing so under the clear provisions of Section 13 (2) of the PAGCOR Charter, it is entitled to the refund of the amount paid.
>
> To recall, [Melco] reported the following sales and input taxes in its amended Quarterly VAT Returns for the third and fourth quarters of 2017, as follows:

Schedule of Sales	(CTA Case No. 10099) 3rd Quarter	(CTA Case No. 10176) 4th Quarter	Total Consolidated
VATable Sales	P1,443,355,639.20	P1,522,186,825.88	P2,965,542,465.08
Sale to Government	11,776,110.03	32,223,968.41	44,000,078.44
Zero-rated Sales	6,669,041.24	7,576,315.56	14,245,356.80
Exempt Sales	8,925 779,900.78	9,873,907,467.86	18,799,687,368.64
Total	**P10,387,580,691.25**	**P11,435,894,577.71**	**P21,823,475,268.96**

[35] *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*, G.R. No. 147295, February 16, 2007.

Schedule of Input Taxes Current Transactions	**3rd Quarter**	**4th Quarter**	**Total**
Purchases of Capital Goods Exceeding P1 million	P3,462,194.86	P10,613,037.67	P14,075,232.53
Domestic Purchases of Goods Other Than Capital Goods	29,861,318.66	31,448,537.57	61,309,856.23
Importation of Goods Other Than Capital Goods	2,500,235.00	1,328,543.00	3,828,778.00
Domestic Purchases of Services	75,459,891.46	66,442,297.09	141,902,188.55
Purchases of Services Rendered by Non-residents	2,036,560.38	2,117,187.71	4,153,748.09
Total	**P113,320,200.36**	**P111,949,603.04**	**P225,269,803.40**

[Melco's] claim for refund of VAT paid attributable or allocable to its VAT-exempt revenues from gaming operations for the third and fourth quarters of TY 2017 is in the aggregate amount of ₱82,689,950.91, detailed as follows:

Particulars	**3rd Quarter (CTA Case No. 10099)**	**4th Quarter (CTA Case No. 10176)**	**Total Consolidated**
Input tax directly attributable to VAT-exempt sales (gaming purchases)	P13,357,111.65	P14,570,766.13	P27,927,877.78
Input tax on common purchases (allocated to revenues from gaming operations)	31,976,400.62	33,014,345.89	64,990,746.51
Input tax on capital goods (exceeding P1 million)	(1,941,610.17)	(9,135,919.78)	(11,077,529.95)
Amortization input tax on capital goods (exceeding P1 million) allocated to VAT-exempt sales	78,017.07	770,839.50	848,856.57
Total input tax on common purchases (allocated to revenues from gaming operations), net of deferred input tax	30,112,807.52	24,649,265.61	54,762,073.13
Amount of claim for refund of or issuance of TCC	**P43,469,919.17**	**P39,220,031.74**	**P82,689,950.91**

However, as mentioned earlier, only [Melco's] VAT on importation of goods other than capital goods and on payments for services rendered by non-residents, for which [Melco] is directly liable, in the total amounts per VAT returns of ₱3,828,778.00 and ₱4,153,748.09, respectively, may be refundable, provided that the same are directly attributable to [Melco's] VAT-exempt sales, hence, this Court's analysis and conclusions will be restricted to said amounts.

The Court-commissioned Independent Certified Public Accountant (ICPA) finds that the input VAT on [Melco's] importation of goods other than capital goods in the amount of ₱3,069,606.00 are not duly supported by sufficient evidence, detailed as follows:

Particulars	3rd Quarter (CTA Case No. 10099) Exhibit	Amounts	4th Quarter (CTA Case No. 10176) Exhibit	Amounts	Total Consolidated
Per schedules of Input Taxes on Importation of Goods other than Capital Goods	**"P-217"**	P2,500,235.00	**"P-251"**	P1,328,543.00	P3,828,778.00
Less Disallowance: Not supported by IEIRDs and SADs	**"P-238"**	2,362,251.00	**"P-270"**	707,355.00	3,069,606.00
Valid Input Taxes on Input Taxes on Importation of Goods other than Capital Goods	**"P-237"**	P137,984.00	**"P-269"**	P621,188.00	P759,172.00

The ICPA also found that petitioner's VAT paid on services rendered by non-residents amounting to ₱4,153,748.09 is fully supported by BIR Forms No. 1600, and that said VAT are directly attributable to [Melco's] *VATable* sales for the third and fourth quarters of TY 2017. As such, VAT paid on these purchases of services *may not be* refunded.

Thus, out of the total amount of VAT on importations of ₱3,828,778.00, only the amount of P759,172.00 are properly supported with the corresponding Bureau of Customs (BOC) Single Administrative Document (SAD) and Statement of Settlement of Duties and Taxes (SSDT), hence, may be considered for refund, to wit:

Exhibit	Receipt Number	Receipt Date	Supplier	Input VAT
"P-237-1" & "P-237-4"	R-45287	07/20/2017	AutoValet Systems Ltd.	P53,949.00
"P-237-2" & "P-237-5"	R-438396	07/20/2017	Ideemaxe Creative Company	76,796.00
"P-237-3" & "P-237-6"	R-55658	09/13/2017	Magcard Enterprise Limited	7,239.00
Total — 3rd Quarter				*P137,984.00*
"P-269-1" & "P-269-6"	R-48415	08/08/2017	Diamond Walker Pte. Ltd.	P89,906.00
"P-269-2" & "P-269-7"	R-441182	11/09/2017	Carpet International Thailand Public Company Limited	120,003.00
"P-269-3" & "P-269-8"	R-441184	11/09/2017	Electrotest Pte. Ltd. CMC Trading Engineering	201,206.00
"P-269-4" & P-269-9"	R-505016	12/22/2017	International Pte. Ltd.	148,471.00

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"P-269-5" & "P-269-10"	R-739452	12/01/2017	Interblock D.D.	61,602.00
Total — 4th Quarter				*P621,188.00*
GRAND TOTAL				**P759,172.00**

It is important to note that the foregoing documents indicate the importer's name as *"MCE Leisure (Philippines) Corporation"* and is the former name of herein [Melco] as seen in its Certificate of Filing of Amended Articles of Incorporation dated May 30, 2017, clearly showing that [Melco] was *"Formerly: MCE Leisure (Philippines) Corporation doing business under the name and style of City of Dreams Manila and COD Manila"* and that its present name is *"Melco Resorts Leisure (PHP) Corporation as amended on April 7, 2017."*

Upon further analysis of the documents submitted by [Melco], this Court finds that the foregoing valid input VAT amount should be reduced by the amounts that are already barred by prescription pursuant to Section 229 of the 1997 NIRC, as amended, which provides:

... ...

Based on the dates of receipt of the aforementioned VAT on importations, [Melco] had until the following dates to file its administrative and judicial claims for refund:

Exhibit	Receipt Date	End of 2-year Period	Administrative Claim	Petition for Review
3rd Quarter				
"P-237-1" & "P-237-4"	07/20/2017	07/20/2019		
"P-237-2" &"P-237-5"	07/20/2017	07/20/2019	3/29/2019	7/01/2019
"P-237-3" & "P-237-6"	09/13/2017	09/13/2019		
4th Quarter				
"P-269-1" & "P-269-6"	08/08/2017	08/08/2019		
"P-269-2" & "P-269-7"	11/09/2017	11/09/2019		
"P-269-3" & "P-269-8"	11/09/2017	11/09/2019	6/28/2019	10/01/2019
"P-269-4" & "P-269-9"	12/22/2017	12/22/2019		
"P-269-5" & "P-269-10"	12/01/2017	12/01/2019		

Considering the foregoing, VAT paid by [Melco] on importation in the fourth quarter of 2017 in the amount of ₱89,906.00 with the following details should be disallowed because the judicial claim pertaining thereto was filed outside of the prescribed period:

Exhibit	Receipt Number	Receipt Date	Supplier	Input VAT
"P-269-1" & "P-269-6"	R-48415	08/08/2017	Diamond Walker Pte. Ltd.	P89,906.00

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The ICPA describes [Melco's] total valid input VAT on importation as follows:

	3rd Quarter	4th Quarter	Total
Directly attributable to exempt sales (gaming purchases)	P84,035.00	P501,185.00	P585,220.00
Common purchases allocated to exempt sales	46,267.79	103,433.34	149,701.13
Common purchases allocated to VATable sales	7,681.21	16,569.66	24,250.87
TOTAL	**P137,984.00**	**P621,188.00**	**P759,172.00**

It can be surmised from the foregoing that only the following VAT on importation in the total amount of ₱173,952.00 are <u>not</u> directly attributable to [Melco's] exempt sales:

	3rd Quarter	4th Quarter	Total
Valid VAT on importations per ICPA	P137,984.00	P621,188.00	P759,172.00
Less: Directly attributable to exempt sales	84,035.00	501,185.00	585,220.00
VAT on importations NOT directly attributable to exempt sales	**P53,949.00**	**P120,003.00**	**P173,952.00**

These amounts pertain specifically to the following importations:

Exhibit	Receipt Number	Receipt Date	Supplier	Input VAT
3rd Quarter				
"P-237-1" & "P-237-4"	R-45287	07/20/2017	AutoValet Systems Ltd.	P53,949.00
4th Quarter				
"P-269-2" & "P-269-7"	R-441182	11/09/2017	Carpet International Thailand Public Company Limited	120,003.00
TOTAL				P173,952.00

Thus, it can be safely deduced that the input taxes on importation that is barred by prescription in the amount of ₱89,906.00 is directly attributable to [Melco's] exempt sales but shall be deducted from the total input VAT that are directly attributable to its exempt sales.

Having determined [Melco's] valid VAT on importations and the portion of it that is directly attributable to its VAT-exempt revenues from gaming operations for the third and fourth quarters of TY 2017, the Court finds that [Melco] is only entitled to the refund of VAT on its importation of goods other than capital goods in the amount of ₱495,314.00, computed thus:

	3rd Quarter	**4th Quarter**	**Total**
Valid VAT on importations directly attributable to VAT-exempt sales	P84,035.00	P501,185,00	P585,220.00
Less: Disallowed due to prescription	-	89,906.00	89,906.00
Total refundable VAT on importations	**P84,035.00**	**P411,279.00**	**P495,314.004**

On CTA EB No. 2980 (CIR's Petition for Review):

The Court in Division did not err in granting respondent a refund or tax credit of ₱495,314.00 for unutilized input VAT on importation of goods other than capital goods for the third and fourth quarters of TY 2017.

A careful perusal of the CIR's *Petition for Review* shows that it merely reiterates arguments which had been thoroughly discussed and passed upon by the Court in Division in its *Amended Decision* dated February 21, 2024, and *Resolution* dated August 5, 2024. The Court *En Banc* sees no reason to deviate from the findings of the Court in Division that PAGCOR's tax exemption privileges inure to the benefit of Melco, being a PAGCOR licensee, pursuant to Section 13(2)(b), in relation to Section 13(2)(a) of PD No. 1869, as amended.

Notably, the conclusion reached by the Court in Division is firmly anchored in law and jurisprudence. In the *Bloomberry* case, the Supreme Court held that the payment of the five percent (5%) franchise tax by PAGCOR and its licensees exempts them from all other taxes, including corporate income tax. The Supreme Court emphasized that this exemption remains effective, having neither been repealed nor amended by subsequent legislation, *viz.*:

> Section 13 of PD No. 1869 evidently states that **payment of the 5% franchise tax by PAGCOR and its contractees and licensees exempts them from payment of**

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> **any other taxes, including corporate income tax**, quoted hereunder for ready reference:
>
> ... ...
>
> As previously recognized, **the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws** (*i.e.*, Section 1 of R.A. No. 9337 which amended Section 27 (C) of the NIRC of 1997); thus, it is still in effect, Guided by the doctrinal teachings in resolving the case at bench, **it is without a doubt that, like PAGCOR, its contractees and licensees remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit**.
>
> We adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. **As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application**.
>
> As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that **all contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos**. (*Boldfacing supplied; citations omitted)*

In the subsequent case of *Saint Wealth*, the Supreme Court, citing its earlier ruling in *Bloomberry*, categorically held that PAGCOR's tax privilege of paying only a five percent (5%) franchise tax, in lieu of all other taxes, likewise extends to its licensees engaged in casino and related gaming operations:

> Considering the above-cited provisions, this Court clarified in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue* (Bloomberry), that **PAGCOR's tax privilege of paying only a five percent (5%) franchise tax for income generated from its gaming operations, in lieu of all other taxes, inures to the benefit of PAGCOR's licensees**:

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... ...

> Clearly, **both law and jurisprudence mandate that PAGCOR's licensees are only liable to pay a five percent (5%) franchise tax for income derived from its gaming operations**. However, a plain reading of the PAGCOR Charter and the ruling in *Bloomberry* shows that the liability of paying the five percent (5%) franchise tax only applies to PAGCOR's licensees which are connected to the operations of casinos and other related amusement places. (*Emphasis supplied; citations omitted)*

Accordingly, the Court in Division correctly ruled that Melco is entitled to the tax privileges granted under PAGCOR's charter.

With respect to the CIR's contention that only Melco's suppliers or sellers may claim a refund of input VAT, the Court *En Banc* is not persuaded. As an exception to the general rule, a purchaser may claim a refund or tax credit (even if it merely bears the economic burden of the tax) when the law expressly grants it an exemption from both direct and indirect taxes.

In the *PAL* case, the Supreme Court held that a party which bears the economic burden of a tax may claim a refund when the said party enjoys exemption from both direct and indirect taxes. The pertinent portion of the decision reads:

> In this relation, Section 204(c) of the NIRC states that it is the statutory taxpayer which has the legal personality to file a claim for refund...
>
> ... ...
>
> However, **the abovementioned rule should not apply to instances where the law clearly grants the party to which the economic burden of the tax is shifted an exemption from both direct and indirect taxes.** In which case, the latter must be allowed to claim a tax refund even if it is not considered as the statutory taxpayer under the law. Precisely, this is the peculiar circumstance which differentiates the *Maceda* case from *Silkair.*
>
> To elucidate, in *Maceda,* the Court upheld the National Power Corporation's (NPC) claim for a tax refund since its own charter specifically granted it an exemption from both direct and indirect taxes, viz.:

> . . . [**Because, however, the NPC has been exempted from both direct and indirect taxation, the NPC must be held exempted from absorbing the economic burden of indirect taxation.** This means, on the one hand, that the oil companies which wish to sell to NPC absorb all or part of the economic burden of the taxes previously paid to BIR, which they could shift to NPC if NPC did not enjoy exemption from indirect taxes. This means also, on the other hand, that the NPC may refuse to pay the part of the "normal" purchase price of bunker fuel oil which represents all or part of the taxes previously paid by the oil companies to BIR. **If NPC nonetheless purchases such oil from the oil companies — because to do so may be more convenient and ultimately less costly for NPC than NPC itself importing and hauling and storing the oil from overseas — NPC is entitled to be reimbursed by the BIR for that part of the buying price of NPC which verifiably represents the tax already paid by the oil company-vendor to the BIR.**

> Based on these rulings, it may be observed that the propriety of a tax refund claim is hinged on the kind of exemption which forms its basis. **If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax**. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim. *(Boldfacing supplied; citations omitted)*

Thus, the right to claim a refund depends on the nature of the exemption granted. Where the exemption extends only to direct taxes, the statutory taxpayer alone may claim. But where the exemption extends to both direct and indirect taxes, the party bearing the tax burden, even if not the statutory taxpayer, has standing to seek a refund.

As a PAGCOR licensee, Melco enjoys both direct and indirect tax exemptions under a special law. Thus, by way of exception to the general rule, it has the legal standing to claim a refund or tax credit of VAT erroneously passed on to it.

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WHEREFORE, premises considered, the *Petition for Review* filed by Melco Resorts Leisure (PHP) Corporation in CTA *EB* No. 2976, and the *Petition for Review* filed by the Commissioner of Internal Revenue in CTA *EB* No. 2980, are hereby **DENIED** for lack of merit. Accordingly, the assailed *Amended Decision* dated February 21, 2024, and the *Resolution* dated August 5, 2024, are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With due respect, I maintain my Dissent in the assailed Decision in CTA Case Nos. 10099 & 10176)

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice